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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CAPACITORS ANTITRUST
LITIGATION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

Master File No. 14-CV-03264-JD

**STIPULATION AND [PROPOSED]
ORDER REGARDING DISCOVERY OF
DOCUMENTS PRODUCED TO NON-U.S.
ANTITRUST ENFORCEMENT
AUTHORITIES**

1 WHEREAS Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs (“Plaintiffs”)
2 served Plaintiffs’ Second Set of Requests for Production of Documents on the undersigned
3 defendants;

4 WHEREAS, Plaintiffs request, among other things, documents provided to or seized by
5 antitrust enforcement authorities in jurisdictions outside the United States;

6 WHEREAS, the parties disagree on whether the requests are proper and whether antitrust
7 enforcement authorities in jurisdictions outside the United States might assert objections to
8 Plaintiffs’ requests or take action against one or more defendants if defendants were to comply
9 with the requests;

10 WHEREAS, the parties believe that circumstances might change as antitrust enforcement
11 authorities in jurisdictions outside the United States reach later stages of their investigations; and

12 WHEREAS, the parties wish for this litigation to proceed as expeditiously as possible;

13 NOW, THEREFORE, the parties stipulate, and request that the Court enter an Order, as
14 follows:

15 1. To the extent that Plaintiffs’ request for production of documents number 33 seeks
16 the production of things other than documents and tangible things created in the ordinary course of
17 business, the request is indefinitely deferred without prejudice to Plaintiffs’ right to renew the
18 request. Unless and until Plaintiffs give written notice to defendants that they are renewing the
19 request, defendants will have no obligation to respond or further object to the request to the extent
20 that it seeks the production of things other than documents and tangible things created in the
21 ordinary course of business. If Plaintiffs renew the request, defendants will have retained all of
22 their rights to object to the request.

23 2. To the extent Plaintiffs’ request for production of documents number 33 seeks the
24 production of documents and tangible things created in the ordinary course of business (“ordinary
25 course records”):

26 a. Defendants will have no obligation to produce ordinary course records that
27 were seized by an antitrust enforcement authority in a jurisdiction outside the United States,
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1 provided, however, that if ordinary course records (i) come from files that Plaintiffs and a
2 particular defendant have agreed will be searched and (ii) are responsive to at least one of
3 Plaintiffs' requests for production other than request number 33, defendants will not withhold such
4 records from production on the grounds that the records were seized by an antitrust enforcement
5 authority in a jurisdiction outside the United States.

6 b. Unless a foreign enforcement authority in a jurisdiction outside the United
7 States objects within sixty (60) day from the Court's entry of this Order (in which case see
8 paragraph 3 below), defendants will produce ordinary course records that were submitted to an
9 antitrust enforcement authority in a jurisdiction outside the United States in a form that identifies
10 them as being responsive to Plaintiffs' request for production of documents number 33.

11 3. If an antitrust enforcement authority in a jurisdiction outside the United States tells
12 a defendant that it objects to the defendant making the production described in paragraph 2(b)
13 above, the defendant shall promptly disclose to Plaintiffs which enforcement authority has
14 asserted an objection and will provide Plaintiffs with sufficient information about the nature of the
15 objection to allow Plaintiffs, if they choose to bring a motion to overrule any such objection or to
16 compel production of the records, to apprise the Court of the nature of the enforcement authority's
17 objection. Any such defendant shall be relieved from any obligation to produce the records until
18 the enforcement authority withdraws its objection or, if Plaintiffs move for an order overruling any
19 such objection or compelling defendant's production of the records, until the Court enters an order
20 compelling production of the records. In the event that an antitrust enforcement authority in a
21 jurisdiction outside the United States wishes to express its views to the Court, the Court will
22 consider such views and the form in which they might be presented based on the circumstances at
23 the time.

24 4. Nothing in this Stipulation shall modify or supersede any scheduling or other Order
25 of the Court.

26 The undersigned parties jointly and respectfully request that the Court enter this Proposed
27 Order as an Order.

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1 **IT IS SO STIPULATED**, through Counsel of Record.

2 Date: November 11, 2015

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16 Pursuant to Civil Local Rule 5.1(i)(3), I attest that all other signatories listed, and on whose
17 behalf the filing is submitted, concur in the filing's content and have authorized the filing.

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19 Dated: November 11, 2015

/s/ George A. Nicoud III

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21 **IT IS SO ORDERED.**

22
23 DATED: _____

24 Hon. James Donato, U.S.D.J.